

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA STATE RETIREMENT SYSTEM

In the Matter of the Application of Lee E.
Erkkila for Minnesota State Retirement
System Correctional Plan Duty Disability
Benefits

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter came on for a fact-finding conference before Administrative Law Judge Laura Sue Schlatter on December 5, 2013, at 9:30 a.m. at the Office of Administrative Hearings, 600 Robert Street North, St. Paul, Minnesota. The hearing record closed at the conclusion of the hearing.

James W. Balmer, Falsani, Balmer, Peterson, Quinn & Beyer, appeared on behalf of Lee E. Erkkila (Applicant). Julie Leppink, Legal Director, Minnesota State Retirement System (MSRS), appeared on behalf of MSRS.

STATEMENT OF THE ISSUE

Did the Applicant demonstrate, by a preponderance of the evidence, that he is entitled to duty disability benefits because his disability is the direct result of an injury arising out of the performance of correctional employee duties that presented an inherent danger?

SUMMARY OF CONCLUSION

The Applicant demonstrated by a preponderance of the evidence that he is entitled to duty disability benefits. The Applicant's knee injury, which is the primary cause of his disability, occurred during the performance of inherently dangerous duties which were part of his job as a security counselor at the Minnesota Sex Offender Program (MSOP).

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Injury

1. Mr. Erkkila served as a security counselor at the MSOP at Moose Lake, Minnesota, for nineteen years and is a member of the MSRS Correctional Plan.¹

2. MSOP treats and houses sex offenders who have been civilly committed to the MSOP. A person who has been civilly committed to MSOP has been found by a court to be a sexually dangerous person or a psychopathic personality.²

3. As a security counselor, among many other tasks, Mr. Erkkila was required to:

- a) Closely monitor and observe client movement, activities and behaviors in immediate and surrounding areas to minimize risks and anticipate safety/security issues;
- b) Conduct regular client population counts and conduct security rounds as required by Post Orders³

4. On May 5, 2008, Mr. Erkkila injured his right knee in the course of his employment as a security counselor.⁴

5. During a routine security room check with his partner on May 5, 2008, Mr. Erkkila, and a patient who was housed on the top tier of Unit Beta at MSOP, exchanged confrontational words. After Mr. Erkkila and his partner left the patient's room, they went to the Unit Beta stairs, about ten feet away. As he started down the stairs, Mr. Erkkila heard the same patient's room door slam shut.⁵

6. The patient room doors were not locked. Mr. Erkkila's immediate thought was that the patient he had just confronted was still angry and was pursuing him, intent on hurting him. Mr. Erkkila feared that the patient might have slammed his door shut as he exited his room to pursue Mr. Erkkila down the stairs.⁶

7. He turned to see whether he was being pursued, but the patient had slammed the door and remained in his room. As he turned abruptly, Mr. Erkkila felt his knee pop.⁷

¹ Ex. G, p. 3; Ex. 9. See Minn. Stat. §§ 352.91 and 352.95.

² See Minn. Stat. §§ 253D.02, subds. 15, 16; and 253D.07.

³ Ex. 4, p. 3.

⁴ Exs. 7, 8, and A.

⁵ Testimony of Lee Erkkila (Test. of L. Erkkila).

⁶ Test. of L. Erkkila.

⁷ Test. of L. Erkkila, Ex. 12, pp. 1-2.

8. Mr. Erkkila's injury occurred when he twisted his knee while turning abruptly in response to the sound of a door being slammed by the patient who had confronted him moments before.⁸

9. The injury Mr. Erkkila sustained on May 5, 2008 consisted of tears of the ligaments and meniscus of his right knee requiring multiple arthroscopic procedures, along with severe patellar chondromalacia.⁹

10. MSOP administration warned MSOP security counselors shortly before this incident that security staff should be particularly cautious on the stairs because they were especially vulnerable to assault by patients on the stairs.¹⁰

Application for Disability Benefits

11. Mr. Erkkila submitted an Application for MSRS Disability Benefit Correctional Plan (Application), dated and signed by him on April 15, 2013, and marked received by MSRS on April 17, 2013.¹¹

12. MSRS uses only one Application for regular and duty disability benefits. The Application contains no separate section requesting information regarding duty disability benefits.¹²

13. Mr. Erkkila did not fill in the box on the Application labeled "Explain your disability." Nor did he explain anywhere on the Application the circumstances surrounding his knee injury.¹³

14. Mr. Erkkila read the Application before submitting it. He also read the Physician's Statement form before submitting it to his doctor for completion.¹⁴

15. The Physician's Statement form included, on its first page, the language from Minnesota Statutes, section 325.01, subdivision 17b, defining "duty disability." That definition did not include the words "inherent danger" directly in the duty disability subdivision. On the second page of the Physician's Statement form, question eleven read:

In your opinion, is this employee disabled as defined on Page 1?

Duty disability means an occupational disability that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties.

⁸ Test. of L. Erkkila.

⁹ Ex. 7.

¹⁰ Test. of L. Erkkila.

¹¹ Ex. 1.

¹² Ex. 1.

¹³ Ex. 1.

¹⁴ Test. of L. Erkkila.

Regular disability means an occupational disability that is NOT the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties.¹⁵

16. Mr. Erkkila did not understand from reading either document that he was required to show his injury had to have occurred while he was engaged in an inherently dangerous task for him to qualify for duty disability benefits. He thought he only had to show essentially what was required for him to qualify for workers' compensation benefits.¹⁶

17. Following its receipt of Mr. Erkkila's Application, MSRS requested a medical opinion from Dr. Jared Frazin, a medical consultant for the Minnesota Department of Health. On June 21, 2013, Dr. Frazin submitted a report to MSRS entitled "Medical Opinion Regarding Granting of or Continuation of Total and Permanent Disability Benefits Under Minnesota Statutes 352.95 as amended by Laws 1980, Chapter 342 of the Minnesota State Retirement System Correctional Employee Law. . . ."¹⁷

18. Dr. Frazin's report was based on medical records from Mr. Erkkila's physicians, Dr. Kaiser and Dr. Carlson. Both Drs. Kaiser and Carlson performed medical examinations in April 2013, and their respective reports were dated in April 2013. Based on his review of those reports, Dr. Frazin concluded that Mr. Erkkila "meets the criteria for occupational disability under the Correction Plan"¹⁸

19. In a report dated August 2, 2011, Mark C. Gregorson, M.D. described Mr. Erkkila as "giving a history of twisting his knee at work going down some stairs when they slammed the door behind him and he twisted"¹⁹

20. Mr. Erkkila spoke with Ms. Behl, the Retirement Services counselor at MSRS, at least once during the time MSRS was considering his Application. Ms. Behl did not ask him questions about the circumstances of his knee injury or whether he was involved in an inherently dangerous task. Mr. Erkkila and Ms. Behl primarily discussed the complications that might arise because of the interplay between Mr. Erkkila's workers' compensation claim and his MSRS disability claim.²⁰

21. Mr. Erkkila met with a Certified Rehabilitation Counselor (CRC) on or about March 25, 2013. Mr. Erkkila described the demands of his position as a security counselor at MSOP, including recounting altercations with patients over the years. Mr. Erkkila also told the CRC about the May 5, 2008 incident when he injured his knee.

¹⁵ Ex. 3.

¹⁶ Test. of L. Erkkila.

¹⁷ Ex. 7.

¹⁸ *Id.*

¹⁹ Ex. 2, p. 5.

²⁰ Test. of L. Erkkila.

He did not tell the CRC that the May 5, 2008 injury occurred as a result of being pushed by a patient.²¹

Procedural History

22. In a letter dated July 1, 2013, MSRS notified Mr. Erkkila that his Application for regular disability benefits was approved. The letter stated MSRS had requested additional information from Mr. Erkkila's employer in order to determine whether he qualified for a duty disability benefit. The letter did not state what additional information MSRS was seeking from Mr. Erkkila's employer.²²

23. In a letter dated August 27, 2013, MSRS notified Mr. Erkkila that, "based on the additional information received" his request for a duty disability was denied. MSRS did not state what additional information Mr. Erkkila's employer provided.²³

24. MSRS did not seek additional information from Mr. Erkkila.²⁴

25. In a letter dated September 13, 2013, Mr. Erkkila appealed the denial of duty disability benefits.²⁵

26. At the hearing in this matter, Mr. Erkkila was not able to travel from Duluth to St. Paul on the day of the fact-finding conference because of a snowstorm. His participation was limited to the time during which he was testifying via telephone. He did not listen to, or otherwise participate in, any other portion of the fact-finding conference.²⁶

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The MSRS and the Administrative Law Judge have the authority to conduct the fact-finding conference.²⁷

2. The MSRS gave Mr. Erkkila proper notice of the fact-finding conference and fulfilled all relevant procedural requirements of the statute.

²¹ Test. of L. Erkkila.

²² Ex. 9.

²³ Ex. 10.

²⁴ Test. of Patti Behl (P. Behl).

²⁵ Ex. 11.

²⁶ Test. of L. Erkkila.

²⁷ Minn. Stat. §§ 14.50 and 356.96.

3. The Applicant has the burden to show by a preponderance of the evidence that he is eligible to receive MSRS duty disability benefits.²⁸

4. Mr. Erkkila complied with the application procedures for disability benefits.

5. Minnesota Statutes section 352.95, subdivision 1, provides for a duty disability benefit for a covered correctional employee. It states:

A covered correctional employee who is determined to have a duty disability, physical or psychological, as defined under section 352.01, subdivision 17b, is entitled to a duty disability benefit. The duty disability benefit must be based on covered correctional service only.

6. Duty disability, physical or psychological, for a correctional employee is defined as:

an occupational disability that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties or the performance of less frequent duties either of which are specific to the correctional employee.²⁹

7. Regular disability, physical or psychological, for a correctional employee is defined as:

an occupational disability resulting from a disease or an injury that arises from any activities while not at work or from activities while at work performing normal or less frequent duties that do not present inherent dangers specific to covered correctional positions.³⁰

8. "Normal duties" are defined to mean "specific tasks designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time."³¹

9. A covered correctional employee who is determined to have a duty disability, physical or psychological, is entitled to a duty disability benefit.³²

²⁸ Minn. Stat. § 352.95, subd. 3 (2012); Minn. Rule 1400.7300, subp. 5. Minnesota Statutes section 352.95, subdivision 3, was amended in 2013, effective May 24, 2013 (the date following final enactment). See 2013 Minn. Laws, Ch. 111, Art. 4, Sec. 4. Mr. Erkkila's disability benefit application is dated April 15, 2013. Thus, the 2012 statutory language applies. See Minn. Stat. § 645.21. (Absent clear legislative intent to the contrary, a law shall not be construed to be effective retroactively.)

²⁹ Minn. Stat. § 352.01, subd. 17b (2012). Minnesota Statutes section 352.01, subdivision 17b, was also amended in 2013, effective May 24, 2013 (the date following final enactment). See 2013 Minn. Laws, Ch. 111, Art. 2, Sec. 9.

³⁰ Minn. Stat. § 352.01, subd. 17c.

³¹ Minn. Stat. § 352.01, subd. 17d.

³² Minn. Stat. § 352.95.

10. A duty disability benefit provides the eligible applicant with a higher monthly benefit amount than the regular (non-duty) disability benefit.³³

11. Mr. Erkkila established by a preponderance of the evidence that his disability is the direct result of an injury incurred during the performance of normal duties that present inherent dangers specific to a correctional employee. As a result, he has shown that he is eligible to receive MSRS duty disability benefits under Minn. Stat. § 352.95, subd. 1.

12. The Memorandum that follows explains the reasons for these Conclusions and is incorporated into these Conclusions.

Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the MSRS Board of Directors **RESCIND** its initial denial and **GRANT** Lee E. Erkkila's claim for duty disability benefits.

Dated: January 3, 2014

s/LauraSue Schlatter

LAURASUE SCHLATTER

Administrative Law Judge

Reported: Digitally recorded. No Transcript Prepared.

NOTICE

This Report is a recommendation, not a final decision. The MSRS Board of Directors (Board) will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Parties should contact David Bergstrom, Executive Director, MSRS, 60 Empire Dr., Suite 300, Saint Paul, Minnesota 55103-3000, to determine the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

³³ Minn. Stat. § 352.95.

MEMORANDUM

Introduction

The dispute in this matter is primarily factual. Neither Mr. Erkkila nor his attorney understood that MSRS' interpretation of Minn. Stat. § 352.01, subds. 17b and 17c, required Mr. Erkkila to demonstrate that he was injured while performing an inherently dangerous duty. Because of the misunderstanding, neither the forms Mr. Erkkila and his doctors completed, nor the documentary evidence submitted for the fact-finding conference, addressed the question of inherent danger.

Once MSRS' legal position was clear, Mr. Erkkila did not argue the legal standard. Instead, Mr. Erkkila utilized the fact-finding conference to expand upon the limited information he had previously provided about the incident in his original application for benefits. MSRS challenged Mr. Erkkila's credibility, suggesting that he was changing his story to fit the "inherent danger" standard.

Parties' Arguments

During the hearing, MSRS questioned why Mr. Erkkila had not written any of the details regarding the circumstances under which he had twisted his leg on his application for disability benefits. MSRS asked whether Mr. Erkkila had read the statutory language on the application form and on the doctor's form that accompanies the MSRS application. Finally, MSRS challenged Mr. Erkkila's credibility by pointing out that a report from a Certified Rehabilitation Counselor (CRC) indicated Mr. Erkkila said he had injured his knee when he was pushed by a patient.³⁴

Mr. Erkkila's response to MSRS' questions about the lack of information on the forms was that he did not understand what he was required to show. Although he read the forms, he was left with the impression that he only had to report essentially what was required for workers' compensation. MSRS staff did not prompt him to provide additional details about the circumstances of his injury. Mr. Erkkila speculated that the CRC confused his reporting of numerous other altercations with patients with the actual incident in which his knee was hurt, which involved no actual physical contact with a patient.³⁵

Discussion

Mr. Erkkila's failure to spell out the circumstances under which he injured his knee when he filled out his original First Report of Injury or his later Application is not a

³⁴ Ex. G.

³⁵ Test. of Mr. Erkkila.

sufficient reason to deny the benefits. This is especially so because MSRS did not question Mr. Erkkila further about the incident when making its decision. MSRS did return to Mr. Erkkila's employer, the Department of Human Services, for additional information about his request for duty disability benefits. There is nothing in the record regarding what information MSRS sought, or what information the employer provided. Nor is there any evidence that MSRS included Mr. Erkkila in its communications with his employer, which might have alerted Mr. Erkkila to MSRS' questions concerning his eligibility before the fact-finding conference.

The notion that Mr. Erkkila could have read the Application and failed to understand that he had to show that he was engaged in a duty that presented an inherent danger is well-grounded. The Application quoted confusing statutory language, with no explanation of how MSRS interpreted the language.

Reading the doctor's form would not necessarily have clarified any misunderstanding. The same statutory language is quoted on the first page of that form. Question eleven, on the second page, only adds to the confusion because it discusses and even defines duty disability with no mention of, or reference to, inherent danger.

Reading the forms would not clearly have instructed Mr. Erkkila that he had to provide information regarding the inherent danger in the duty he was performing at the time he was injured in order to qualify for duty disability benefits. There is no place on the Application or the doctor's form where an applicant hoping for duty disability benefits is asked to explain the circumstances of the injury leading to the disability, or whether the duty he was engaged in was part of the aspect of his job that involved "inherent danger." Thus, it is not surprising that none of the significant details regarding the inherent danger involved in the incident emerged until the day of the fact-finding conference.

According to Mr. Erkkila, he did not turn suddenly just because he was startled by the sound of a door slamming as he was walking down an enclosed stairway at the MSOP facility. He was turning to defend himself from what he believed was the hostile pursuit of a sex offender who had threatened him. He was at the top of an open, visible staircase, about ten feet from the threatening patient's room where Mr. Erkkila had just conducted a routine security check, during which he had confrontational words with the patient. If Mr. Erkkila is credible and his statement is accurate, the injury to his knee would meet the definition of an injury occurring during the performance of a normal duty that involves inherent danger.

Credibility

The Administrative Law Judge finds that Mr. Erkkila's testimony was credible. For the reasons explained above, the Administrative Law Judge finds it believable that an applicant for duty disability benefits might not understand the necessity of including detailed information that would show an injury occurred during performance of a duty

that was inherently dangerous. The Administrative Law Judge also finds Mr. Erkkila's explanation that a CRC who had limited familiarity with Mr. Erkkila's history, which included numerous altercations with patients over the years, might have erred when writing the details of his report. This is particularly so because whether the knee injury occurred as a result of being pushed by a patient or in the way Mr. Erkkila described it in the fact-finding conference would not have been relevant for the CRC's report. In addition, the CRC's report is dated March 25, 2013, several weeks before Mr. Erkkila applied to MSRS for disability benefits and months before MSRS denied duty disability benefits. There was no reason for Mr. Erkkila to tell the CRC a different version of the events of May 5, 2008, at the time he met with him.

The circumstances of the fact-finding conference itself lend weight to the credibility of Mr. Erkkila's testimony. The fact-finding conference occurred on the morning after a crippling snowstorm in the Duluth area. Mr. Erkkila was unexpectedly unable to be physically present for the conference, which was held at the OAH offices in St. Paul. His attorney, Mr. Balmer, was present in St. Paul. Mr. Erkkila provided testimony via telephone but did not otherwise listen to the hearing. Thus, when he was called to testify, he was not aware of the discussion that occurred at the beginning of the hearing regarding the "inherent danger" requirement in the statute.

Because Mr. Balmer interpreted Minn. Stat. §352.01, subd. 17b, to require essentially the same showing as a workers' compensation claim, he submitted the same exhibits he used in the workers' compensation proceedings for this conference. It was only after the fact-finding conference began and the attorney for MSRS recited the statutory "inherent danger" requirement in subdivision 17c, that Mr. Balmer realized Mr. Erkkila would have to explain, during his testimony, the circumstances under which he was injured. Since Mr. Erkkila was not present and Mr. Balmer had no opportunity to discuss his testimony with him on the morning of the fact-finding conference, Mr. Erkkila's statements regarding his concerns about being pursued down the stairs by an MSOP patient at the time he was injured were particularly credible. Although the Administrative Law Judge was at a slight disadvantage because Mr. Erkkila's testimony was over the telephone and the Administrative Law Judge could not see him to judge his credibility, the circumstances of his untainted testimony more than balanced that disadvantage. Mr. Erkkila sounded certain and credible as he testified.

CONCLUSION

Mr. Erkkila demonstrated by a preponderance of the evidence that his disability is the direct result of an injury incurred during the performance of inherently dangerous duties which were part of his job as a security counselor at MSOP. Therefore, he should be granted duty disability benefits. For these reasons, the Administrative Law Judge recommends that the MSRS **RESCIND** its initial denial and **GRANT** Mr. Erkkila's duty disability benefit application.

L.S.